

WAYS OF ADDRESSING IN LEGAL DISCOURSE

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Abstract

The author's attention is focused on the ways of addressing in legal discourse. The analysis is aimed primarily at the expressions, and word-formative suffixes used for referring to contractual parties, differentiating their role and stating a relation between them. In addition to this, the goal of the author's interest is the deictic expression used for making reference to a person, thing, idea, etc., which is nearer or further away in place, time, thought (*this/these – that/those, here – there*) as well as a special kind of legal deictic expressions such as *hereby, whereby, hereinafter*.

1 Introduction

Legal discourse is a special kind of context where the process of identification is difficult. It presupposes a great amount of shared experience.

There is no doubt that the interpretation of legal documents is complicated. One of the essential features of legal documents such as contracts and agreements is the intention to create a legal relationship and to express it by certain language means. Contract is a legal agreement between two or more parties (*Dictionary of Law* 1993: 20, 50). It contains a set of obligations between its parties, which are either fulfilled, or cancelled, or violated. The law treats agreement as the essential principle around which economic and social life is based. An agreement sets out the contractual terms agreed between two parties. The idea of an agreement is that two people or two groups of people (two parties) who have different, sometimes even contradictory aims reach a mutually satisfying fulfilment of their differing requirements.

It is apparent that everything in legal language is subordinated to achieving precision and avoiding ambiguity. Nevertheless, the interpretation of contracts/agreements is sometimes troublesome. As many contracts/agreements are designed to be valid for a certain time span they have to define rights and obligations for all possible future hypothetical situations. All important eventualities must be taken into consideration in order to assure the precise understanding of the intended message. The uncertainty of being well-understood stems from unpredictability of human nature and as well as from a large number and great variety of factors which may influence the situation and specify the particular contract/agreement. The interpretation of a legal text seems to be influenced by the temporally, spatially, and socially asynchronous character of communication in legal discourse. The

most obvious way how to observe the relationship between language and context is through the phenomenon of deixis. According to Wikipedia, deixis (Greek: δειξίς display, demonstration, or reference, the meaning “point of reference” in contemporary linguistics having been taken over from Chrysippus, Stoica 2,65) is a process whereby words or expressions rely absolutely on context. The origo is the context from which the reference is made – in other words, the viewpoint that must be understood in order to interpret the utterance. A word that depends on deictic clues is called a deictic or a deictic word. The traditional categories of deixis are person, place and time (Levinson: 1983: 62). Person deixis concerns the encoding of the participants in the speech event in which the utterance in question is delivered. Place deixis concerns the encoding of spatial locations relative to the location of the participants of the speech event. Through deictic expressions the distinction between proximal (closer to the speaker) and distal (usually closer to the addressee) is shown. There is also social deixis. The aim of this paper is to disclose the ways of addressing in legal discourse. In order to provide a deeper insight into the issue I examined the texts of twelve randomly selected contracts and agreements in terms of deixis.

2 Deixis in legal discourse

The research shows that one of the most noticeable features of contracts and agreements is reference made by means of person deixis. According to Hatch (1992) *person deixis* or *personal deixis* refers “to grammatical markers of participant roles in a speech event” (ibid.: 210). It involves all three persons: first, second, and third. In everyday communication there are direct participants: the speaker/writer of communication expressed by the pronouns *I* or *we* (used for referring to the speaker/writer) and the hearer/reader expressed by the second-person pronoun *you*. Other participants called indirect are expressed by the third-person pronouns *he*, *she*, *it*, *they*. Yule (1996) considers the third-person participant/s “an outsider/outside in basic *I/we-you* interaction who is/are necessarily more distant” (ibid.: 10).

Firstly, my interest is focused on the relations between contractual parties and their linguistic determination. I directed my attention towards the deictic expressions and word-formative suffixes used for referring to contractual parties and differentiating their role. The names of the individual parties depend on a type of a contract/agreement, for example *Employer – Employee*, *Creditor – Debtor*, *Owner – Renter*, etc.

The analysis proves that the contrast between the two contractual parties is primarily made by the relation between the word stem and the suffix.

1/ The names of the parties are formed from the same word stem by adding different suffixes. Here several oppositions were observed:

A/ **-or** versus **-ee**

Assignor – *Assignee*, *Bailor* – *Bailee*, *Donor* – *Donee*, *Franchisor* – *Franchisee*, *Leasor* – *Leasee*, *Lessor* – *Lessee*, *Mortagor* – *Mortgagee*, *Obligor* – *Obligee*, *Offeror* – *Offeree*, *Pawnor* – *Pawnee*, *Pledgor* – *Pledgee*, *Promisor* – *Promisee*, *Releasor* – *Releasee*, *Transferor* – *Transferee*, *Trustor* – *Trustee*, *Vendor* – *Vendee*.

B/ **-er** versus **-ee**.

Confider – *Confidee*, *Drawer* – *Drawee*, *Employer* – *Employee*, *Indorser* – *Indorsee*, *Mortager* – *Mortgagee*, *Payer* – *Payee*.

Sometimes both endings **-er/-or** can be added to the stem (*mortgager* or *mortgagor*). If this is the case we deal with two variants of the same lexeme.

C/ **-ant** versus **-er**

Claimant (a person who makes a claim) – *Claimer*.

The highlighted suffixes function as carriers of distinctive meaning. Their main contribution to the meaning of the nouns (e.g. *Assignor* – *Assignee*) created from a corresponding verb (*assign*) and a suffix (e.g. **-or** versus **-ee**) is that which follows from agent versus patient distinction. The suffixes **-or**, **-er**, **-ant** are chiefly formal and form agential nouns. They denote *a person who -s*, i.e. performs the action expressed by the verb. (An *employer* is the person who employs.) The suffix **-ee** (that originated in Old French and is originally a legalistic suffix) forms patient nouns. The noun suffix **-ee** carries the meaning of *a person who is -ed*. (An *employee* is the person who is employed.) The **-or**, **-er**, **-ant** versus **-ee** opposition implies the relationship which is that of **-ee** dependence on **-er**, **-or**, **-ant** or **-ee** subordination to **-er**, **-or**, **-ant**.

Yet it should be admitted that during the analysis an example was found that violates the above-described. It is not possible to add the endings to a corresponding verb (or a noun) automatically; the meaning of the verb/noun has to be taken into consideration. For example,

- *mortgage* means to give someone a right to the ownership of a house, land, etc. in return for money lent for a certain period;
- ***mortgager/ mortgagor*** is a person who borrows money, giving a property and takes a mortgage of a property as security;
- ***mortgagee*** is a person or company who lends money for someone to buy a property or security.

2/ The names of the parties are also formed from semantically different word stems by adding the same suffix. A stem can be either a verb stem or a noun stem. Here it is not the suffix but the meaning of a verb or noun (to which the suffix is added) that expresses the relation between the superior and the subordinated party. The subordination of *Borrower* to *Lender* is guaranteed by the meanings of the verbs *borrow* and *lend*, i.e. the verb stems to which the suffix *-or* is added. In all probability in the case of *Creditor* – *Debtor* the suffix *-or* is added to the noun stems *credit-* and *debt-*. *Debt* (according to all dictionaries used in the process of research) functions only as a *noun* while *credit* can function both as a noun and as a verb. I believe that both the contractual parties are derived from the same word class stem. In this case it is the noun and the meanings of the nouns *credit* and *debt* that determine the relation between the parties. *Creditor*, for instance, is a person or organization to whom/which money is owed. *Debtor* is a person or organization that owes money. Here also several variations were discovered.

A/ *-or* versus *-or*
Creditor – *Debtor*

B/ *-er* versus *-er*
Lender – *Borrower*, *Holder* – *Maker*, *Maker* – *Bearer*, *Maker* – *Holder*,
Orderer – *Manufacturer*, *Owner* – *Hirer*, *Owner* – *Renter*, *Seller* –
Buyer, *Seller* – *Purchaser*, *Supplier* – *Buyer*, *Shipper* – *Carrier*, *Writer*
– *Publisher*

It happens that in different contracts a party can have more counter partners (*Maker* – *Bearer*, *Maker* – *Holder*; *Owner* – *Hirer*, *Owner* – *Renter*; *Seller* – *Buyer*, *Seller* – *Purchaser*).

3/ The names of the parties are formed from semantically different word stems by adding different suffixes.

-or versus *-er*
Contractor – *Owner*, *Distributor* – *Supplier*, *Lessor* – *Hirer*

It is worth noting that the relation between parties has not necessarily to be that of an independent versus dependent, superior versus subordinated party, as their roles seem to be equally imperative.

The table below shows the suffixes capability to express the active – passive relation. N, V, and A identify the word classes as follows: N (noun), A (adjective) and V (verb).

Suffix	Function	
-ant	person who V-s'	claimant
-ee	person who has been or is to be V-ed'	employee
	person to whom something has been or is to be V-ed'	assignee
	person who V-s' or has V-ed'	standee
	person who is A'	absentee
	one who is object of the V'	payee
-er, -or	person who V-s'	employer
	person concerned with N'	Shipper
	person living in N'	Occupier

Secondly, my interest was directed at the way of expressing specific reference in the names of contractual parties. The names of contractual parties are expressed by common nouns (*Seller – Buyer*). The research proved our expectations: 78 per cent of them were capitalised. Approximately 65 per cent of the capitalised contractual parties' names were found with the definite article, 35 per cent with zero article. It is obvious that capitalisation of the first letter makes the noun unique. In this case originally common nouns express specific reference through the capital letter in the same way as proper nouns do. It appears to be a certain kind of transformation of common nouns into proper nouns, at least on the functional level. The presence of the definite article with the capitalised party's name doubles and thus strengthens its specific reference. The absence of the definite article (or the demonstrative pronoun *this*) with a capitalised common noun can be explained by the fact that some creators of legal documents treat capitalised common nouns as proper nouns and therefore they use them without the definite article. Eighty eight per cent of the non-capitalised names of contractual parties were preceded by the definite article, which is a common way of expressing specific reference in common nouns.

The findings show that the specific reference may be expressed by:

- both the definite article (or demonstrative pronouns *this*) and a capital letter (*the Purchaser*),
- the capital letter (*Lessee*),
- the definite article with a non-capitalised name of a party (*the renter*).

In addition to the names of contractual parties, personal pronouns are also used for making reference (first of all *he, it*). The analysis shows that less frequent distribution of the third-person pronouns *he* or *it* (it is used when referring to

a company, e.g. *Company, Corporation*) in legal texts for the sake of abundant use of the names of the individual parties can be observed. The pronouns are used only when there is certainty as to who is referred to. The third person communicates distance as well as makes legal communication very impersonal and formal.

- (1) ***The Trustee**, in addition to all other powers granted by this Agreement and by the Law, shall have the following additional powers with respect to the trust, to be exercised from time to time at the trustee's discretion to employ and to pay from the trust reasonable compensation to such attorneys, accountants, brokers, and investment, tax and other advisors as **he** shall deem advisable.*

In the next example the presence of two parties mentioned in the same sentence does not enable repeated usage of the pronoun in order to avoid ambiguity.

- (2) ***Lessee** shall pay all taxes, assessments and charges on said Property or its use during the time **he** is in possession of the same, imposed by federal, state, municipal or other public, or other authority; save **Lessor** free and harmless therefrom; and to these ends reimburse **Lessor** on a pro rata basis for such taxes or charges paid by **Lessor** hereto and hereafter.*

In some contracts and agreements more general names instead of the exact party's name, such as *the party* or *both parties* are found.

- (3) *If this offer is not executed by **both parties** hereto on or before ..., the aforementioned deposits shall be returned to the Purchaser, and this offer shall thereafter be null and void.*

During the analysis I also pay attention to the deictic expression used for making reference to a person, thing, idea, etc., which is nearer or further away in place, time, or a thought. According to the findings of the analysis the most frequent in the analysed document appear to be:

1/ *this/these* versus *that/those*

The meaning of *this* is 'this time or place, now or here, being the one of two or more people or things that is nearer in time, place and thought'. The meaning of *that* is 'then and there; being the one of two or more people or things that is further in time, place and thought in both directions: to the past as well as to the future'. In plural the appropriate plural pronouns are used. The descriptions of their usage show that they are used to denote temporal, spatial, and personal opposition. They primarily function as determiners.

- (4) *The Trustee, by joining in the execution of **this** Agreement, hereby signifies his acceptance of **this** trust.*
- (5) *When the credit balance on the foreign exchange account is utilised, the Bank shall retain the expected commission and costs, and by signing **this** Agreement the Account Holder accepts and acknowledges **that** practice.*

- (6) *Account Holder undertakes the obligation, that whenever any change occurs in its personal data (address, mailing address, modification of the articles of association, registration, etc.) it shall inform the Bank on same without delay. Omission of **that** obligation will be regarded as grave violation of **this** Agreement.*

The opposition *this – that* can also be expressed by *hence – thence* or *former – latter*.

Hence – thence usually express spatial deixis (less frequently temporal deixis). *Former – latter* are mostly used for expressing temporal or personal deixis.

2/ adverbs *here – there*

Deictic expressions *here – there* are used in the same ways as *this/these – that/those*. Both these adverbs are often substituted by more precise substitutes that are used only in legal writing such as *hereby, herein, hereinafter, thereafter, therefrom, etc.*

The expressions such as *hereby, whereby, hereinafter, etc.* are a special kind of legal deictic expressions. They are formed from more than one constituent: *here-after, here-by, there-upon, where-as, where-by, here-in-after there-in-after, there-on-to, etc.* Their first constituent is an adverbial of place, such as *here-, there-, where-* to which a preposition is suffixed. The explanations of these expressions provided by all common dictionaries are based on showing the opposition between the adverbs *here* and *there* or the demonstrative pronouns *this* and *that*. They, however, say much more than it seems to be said.

Here functions as a prefix and has the meaning ‘this time’ or ‘this point’. *There* is also a prefix but refers to ‘that time’ or ‘that point’. The basic distinction between them is that *this* refers to something, someone, or to an idea which is closer to the speaker/writer both temporally and spatially. *That* is used for making reference to the person, thing, idea, etc., which is far or further away in place, time, thought, etc. from the speaker/writer in both directions towards the past as well as towards the future. We can see that both *here-* as well as *there-* have either temporal or spatial sign (or both). *Where-* also functions as a prefix having the meaning ‘which place’. Some expressions, such as *hitherto*, are less exact. The dictionaries state both the meanings ‘until **this**’ as well as ‘until **that** time’.

They are used *as* adverbs. Some of them may also be conjunctions and adjectives. The frequency of their occurrence in legal documents is significantly high. In one sentence several such expressions frequently occur.

- (7) *Agreement entered into between: (the name of a person), **hereinafter** referred to as the Lessee on the one part and (the name of a person) on the other part, **hereinafter** referred to as the Lessor **whereby** Lessor is **hereby** granting on Lease to Lessee who accepts the tenement solely for residential purposes namely:...*

- (8) *Together with all equipment and accessories attached **thereto** or used in connection **therewith** including the following: ... all of which are included in the term Property as used **herein**.*

Here is the list of the expressions collected during the analysis.

HEREBY (adverb) *in **this** way; by **this** letter; by means of **this** statement, law, etc.; by doing or saying **this** (compare thereby)*

- (9) *The Contractor **hereby** accepts that the European Cooperation Fund may be replaced at any time by any organization considered appropriate by the Commission.*

HEREIN (adverb) *in **this** document, in **this** piece of writing, esp. in **this**...*

- (10) *The name of the company..., (**herein** called 'the corporation') appoints (the name of a person)(**herein** called 'the representative') to be its exclusive agent for the sales of the following goods (**herein** called 'the contractual goods') in the areas (**herein** called 'the contract area').*

HEREINAFTER (adverb) *later in **this** official paper, statement*

- (11) *This Declaration of Revocable Trust is made this ... day of ..., 19.., by and between (the name of a person), of (the residence), **hereinafter** called the Trustor; and (the name of a person), of (the residence), **hereinafter** called the Trustee.*

HEREOF (adverb) *of **this**; belonging to **this***

- (12) *The disputes shall be settled by three arbiters who shall consider any dispute issues according to the provisions **hereof** and to the SR material law.*

HEREON (adverb) ***here**, on the base of **this***

- (13) *AGREED that the Vendor sells and the Purchaser buys as above, subject to the Special Conditions endorsed **hereon** and to the National conditions of sale Twentieth Edition so far as the latter Conditions are not inconsistent with the special Conditions.*

HERETO (adverb) *to **this**; to **this** agreement or piece of writing*

- (14) *The parties **hereto** explicitly agree that this Agreement is executed intuiti personae...*

HERETOFORE (adverb) *previously, earlier; until **now**, before **this** time*

- (15) *I, (the name of a person, residing at ..., being of sound and disposing mind and memory and considering the uncertainty of this Life, do make, publish and declare this my Last Will and Testament, as follows, hereby revoking and making void any other will by me **heretofore** made.*

HEREUNDER (adverb) under **this** heading or below **this** phrase, in the **later** time arising **here** from **this** document

- (16) Licensee shall pay to Europay an annual Use Fee and other fees **hereunder** calculated in the manner set forth in attachment C based upon use of the Software by Sublicensees.

HEREUNTO (adverb) **here on this**

- (17) In witness hereof the owner and the Hirer have **hereunto** subscribed their hands on this day, month and year first above written.

HEREWITH (adverb) together with **this** letter; with **this** letter or written material

- (18) I enclose **herewith** two copies of the Contract.
(19) A deposit of (the sum of money) is being paid **herewith** by the Lessee.

THEREAFTER (adverb) after **that** in time or order, afterwards

- (20) If this offer is not executed by both parties hereto on or before ..., the aforementioned deposits shall be returned to Purchaser, and this offer shall **thereafter** be null and void.

THEREAT (adverb) at **that** place, at **that** occurrence

- (21) a) Except as otherwise provided by statute or by the Certificate of Incorporation at each meeting of shareholders, each shareholder of record of stock of the Corporation entitled to vote **thereat** shall be entitled to vote for each share of stock registered in his name on the books of the Corporation. (Articles of Incorporation, Section 6)

THEREFROM (adverb) from **that**

- (22) Lessee shall pay all taxes, assessments and charges on said Property or its use during the time he is in possession of the same, imposed by federal, state, municipal or other public, or other authority; save Lessor free and harmless **therefrom**; and to these ends reimburse Lessor on a pro rata basis for such taxes or charges paid by Lessor hereto and hereafter.

THEREIN (adverb) in **that** place or piece of writing; in **that** particular matter

- (23) I hereby certify that on this day, before me, an officer duly authorised in (the name of the country) aforesaid and in the County aforesaid, to take acknowledgements, personally appeared ..., to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that it was executed for the purposes set out **therein**.

THEREOF = *therefrom* (adverb) of **that**; belonging to **that**

- (24) The competent authorities (if any is involved) shall have the right to check the Plant or sections **thereof**.

THERETO (adverb) to **that** agreement or piece of work

- (25) Europay may, reasonably, request to verify such Sublicensee's use and calculation of fees relating **thereto**.

THEREUNDER (adverb) under **that**, it, or them; bellow, following or in accordance with

- (26) The Trustee, in addition to all other powers granted by this Agreement and by the Law, shall have the following additional powers with respect to the trust, to be exercised from time to time at the trustee's discretion to enforce any and all mortgages, pledges and deeds of trust held by the trust and to purchase at any sale **thereunder** any such real estate of personal property subject to any mortgage, pledge or deed of trust.

THEREUNTO (adverb) **there**, on **that**

- (27) c) Each shareholder entitled to vote or to express consent or dissent without a meeting, may do so by proxy; provided, however, that the instrument authorising such proxy to act shall have been executed in writing by the shareholder himself, or by his attorney-in-fact **thereunto** duly authorised in writing. (The Articles of Incorporation, Section 6)

THEREUPON = *thereon* (adverb) as a result of **that**, about **that** matter; without delay, after **that**; **then**;

- (28) The Testator above-named, in the presence of us, who were present at the same time, and who **thereupon** at his request, and in the presence of each other, have hereunto subscribed our names as witnesses, on (the date).

THEREWITH (adverb) with **that**

- (29) Transfers of shares of the Corporation shall be made on the share records of the Corporation only by the holder of thereof, in person or by his duly authorised attorney, upon surrender for cancellation of the certificate or certificates representing such shares, with an assignment or power of transfer endorsed thereon or delivered **therewith**, duly executed, with such proof of the authenticity of the signature and of authority to transfer and of payment of transfer taxes as the Corporation or its agents may require. (Articles of Incorporation, Article V, 4)

I would like to point at two different uses of the conjunction *whereas*. Commonly *whereas* has the meaning *but* and is used to show the opposite or different fact or situation, etc. (They want a house, *whereas* we would rather live in a flat.) In the law language *whereas* is used at the beginning of a sentence with the above shown meanings: 'as the situation is stated'; 'taking the following fact into consideration'.

- (30) **WHEREAS**, on the ... day of ..., 2001, I created by written declaration of a revocable trust a copy of which is attached hereto, and having reserved the right to revoke, annul and cancel said trust and declaration creating it, I do now hereby revoke said Trust, with all the principal thereof reverting absolutely to me, with all right and title thereto.

(2)**Whereas** this system is essential for the achievement of the internal market by 1992 and its further development.

(3)**Whereas** the dismantling of internal frontiers is resulting and will continue to result in major corporate reorganizations in the Community, particularly in the form of concentrations;...(EC Legislation, Regulation 4064/89, p. 319)

WHEREBY (adverb) = *per quod* (Latin) by means of **which**, by **which**;
according to **which**

- (31) This Contract may be terminated: immediately after any contractual party has caused a breach of any of its provisions; through a 2 (two)-month written notice, **whereby** the termination period shall begin on the 1st day of the month subsequent to the month in which this notice has been delivered; by mutual agreement of both contractual parties.
- (32) Agreement entered into between: (the name of a person), hereinafter referred to as the Lessee on the one part and (the name of a person) on the other part, hereinafter referred to as the Lessor **whereby** Lessor is hereby granting on Lease to Lessee who accepts the tenement solely for residential purposes namely:...

WHEREFORE for **that** reason, therefore
(adverb or conjunction)

- (33) For in six days the LORD made heaven and earth, the sea, and all that in them is, and rested the seventh day, **wherefore** the Lord blessed the Sabbath day and hallowed it. (Ten Commandments)

WHEREIN in what, in **which**
(adverb or conjunction)

- (34) ...a document **wherein** the regulations are listed

WHEREOF of **which**, whom, what
(adverb or conjunction)

- (35) IN WITNESS **WHEREOF**, the parties hereto have executed this Agreement.
- (36) IN WITNESS **WHEREOF**, I, the Seller have hereto set my hand and seal this... day of..., 2001.

WHEREON = *whereupon* on **which**
(adverb or conjunction)

- (37) ...land **whereon** the dwelling is constructed

3 Conclusion

It is generally true that deixis is organized in an egocentric way (Levinson 1983: 63). The results of the analysis proved that the central person is the writer, the central time is the time at which the writer produces the utterance, and the central space is the writer's location at utterance time. The social centre is the writer's social status and rank, to which the status or rank of addressees or referents is relative. The discourse central is the point which the writer is currently at in the production of their utterance.

I consider the deictic expressions found pragmatic because they show the relationship between the participants of legal communication, their relationships to both the context and the co-text. They refer to a party, time and/or to a place when and/or where a legal document is being composed. They may also refer to its part or parts. They are used to locate all the involved persons in space and time. They may also refer to certain negotiated matters; ideas, statements, phrases, or headings of the document.

It was found out that the interpretation of the words used to refer to people or to place, time, etc. in legal discourse is not a straightforward matter as there is often no collaboration between the writer and the reader.

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